

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

February 27, 1998

NASHVILLE, TENNESSEE

RECEIVED

MAR 02 1998

IN RE: PETITION OF UNITED CITIES)
GAS COMPANY, A DIVISION OF)
ATMOS ENERGY CORPORATION FOR)
APPROVAL OF A TRANSPORTATION)
SERVICE AGREEMENT WITH)
ALUMAX EXTRUSIONS, INC.)

DOCKET NO: 97-01443

TN REGULATORY AUTHORITY
UTILITY RATE DIVISION

**ORDER APPROVING AND ADOPTING THE HEARING OFFICER REPORT
AND RECOMMENDATION FROM THE PRE-HEARING CONFERENCE OF
OCTOBER 28, 1997, AND GRANTING INTERVENTION TO
ALUMAX EXTRUSIONS, INC.**


This matter came before the Tennessee Regulatory Authority ("Authority") on December 16, 1997, at a regularly scheduled Directors' Conference for the presentation of the Hearing Officer's Report and Recommendation from the Pre-Hearing Conference held on October 28, 1997, with Director Melvin J. Malone presiding as Hearing Officer. The Directors having reviewed the Hearing Officer's Report and Recommendation, voted unanimously for its approval.

In the Report and Recommendation, the Hearing Officer discussed the recommendation that Alumax Extrusions, Inc. ("Alumax") had filed a petition to intervene in this matter, subsequent to the conclusion of the Pre-Hearing Conference. As a result, the Directors in approving the Report and Recommendation also approved Alumax's intervention as a party to this proceeding based upon the comments of the Hearing Officer

contained in the report and the standard set forth under Tenn. Code Ann. § 4-5-310. A copy of the Report and Recommendation of the Hearing Officer is attached as Exhibit A and fully incorporated herein by this reference.

IT IS THEREFORE ORDERED THAT:

1. The Report and Recommendation of the Hearing Officer is approved and adopted;
2. Alumax Extrusions, Inc. be the same and is hereby given leave to intervene and participate in this proceeding as its interests may appear and to receive copies of any notices, orders or other documents herein;
3. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration within ten (10) days of the date of this Order; and
4. That any party aggrieved by the Authority's decision in this matter may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


CHAIRMAN


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY


DIRECTOR

BEFORE THE TENNESSEE REGULATORY AUTHORITY

December 8, 1997

NASHVILLE, TENNESSEE

In Re:

'97 DEC 9 AM 8 21

**Petition of United Cities Gas Company, a
Division of Atmos Energy Corporation for
Approval of a Transportation Service
Agreement with Alumax Extrusions, Inc.**

**Docket No.
97-01443**

**REPORT AND RECOMMENDATION OF HEARING OFFICER
ON OCTOBER 28, 1997, PRE-HEARING CONFERENCE**

On September 25, 1997, United Cities Gas Company, ("UCG") filed the above-captioned petition with the Tennessee Regulatory Authority ("Authority"). By its petition, UCG requests Authority approval of a transportation service agreement with Alumax Extrusions, Inc., ("Alumax"). On October 9, 1997, the Consumer Advocate Division, Office of the Attorney General ("CAD") filed a Complaint or Petition to Intervene that sought, among other things, to suspend the proposed contract and convene a contested case. The Authority, by its Order of October 27, 1997, granted the CAD's petition to intervene.

On October 21, 1997, the Directors of the Authority unanimously voted to appoint Director Melvin J. Malone as the Hearing Officer for the purpose of presiding over a Pre-Hearing Conference. To that end, the Authority caused a notice to be issued which set the Pre-Hearing Conference for October 28, 1997.

At the October 28, 1997, Conference, the following appearances were made by counsel:

United Cities Gas Company, A Division of Atmos Energy Corporation - **John L. Baugh**, Esquire, 5300 Maryland Way, Brentwood, TN, 37027.

Alumax Extrusions, Inc., - **Daniel V. Gulino**, Esquire, 3424 Peachtree Road, N.W., Suite 2100, Atlanta, GA 30326.

Consumer Advocate Division, Office of the Attorney General - **Vance Broemel**, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243.

I. Preliminary Matters

The first matter to be disposed of was a discussion regarding the entry of a Protective Order. The parties and Alumax agreed with the Hearing Officer's suggestion that they should coordinate their efforts for the preparation and approval of a Protective Order with Edward Phillips, Associate Counsel of the Authority's Legal Division. As a result of these efforts, a Protective Order has been signed by the parties and has been approved for entry by the Hearing Officer.

The second matter for discussion was the status of Alumax as a non-party. First, as of the date of the Pre-Hearing Conference, Alumax had neither sought intervention, nor been joined as a party in this proceeding. Under these conditions, the CAD took the position that it would be appropriate to have Alumax joined as a party herein. This position was based upon the CAD's

participation in a recent Chattanooga Gas proceeding in which the companies seeking by-pass of Chattanooga's system participated as joint petitioners.¹

After consideration of the concerns raised by the CAD and comments by Alumax and UCG, the Hearing Officer declined to compel the joinder of Alumax as a party to this proceeding. However, the Hearing Officer did urge Alumax to consider the benefits of seeking intervention. Counsel for Alumax informed the Hearing Officer that Alumax would consider pursuing intervention in this matter.² Subsequently, on November 14, 1997, Alumax filed a petition to intervene. This petition will require consideration by the Directors.

II. Issues Identified by the Parties

At the Pre-Hearing Conference, the parties were provided the opportunity to present the issues that they deemed would require disposition by the Authority in this proceeding. After much discussion, the parties framed the issues as follows:

II A. United Cities Gas Company:

1. Whether by-pass of United Cities Gas Company by Alumax Extrusions, Inc., is economically feasible as to rise to the level of being an imminent threat.

¹ See TRA Docket Nos. 97-00262 through 97-00265.

² In addition, counsel for Alumax stated that the CAD could serve discovery requests directly upon Alumax. This assurance was given to relieve any concerns that the CAD had regarding Alumax's current status as a non-party, and the fear that Alumax would not cooperate with the CAD in its discovery efforts.

2. Whether by-pass of United Cities Gas Company by Alumax Extrusions, Inc., is operationally viable to present an imminent threat.

II B. Consumer Advocate Division:

3. Whether the proposed transportation service agreement is in the best interest of all customers of United Cities Gas.

4. Whether the rate proposed by United Cities Gas in its transportation service agreement is the highest possible negotiated rate.

5. To what extent, if any, should United Cities Gas Company be permitted to recover any loss created by the proposed transportation service agreement from customers other than Alumax.

III. Proposed Schedule for the Proceedings

After considering the Authority's already congested calendar, and the comments of the parties during the Pre-Hearing Conference, the Hearing Officer recommends the following schedule for the proceeding:

1. Discovery requests are to be served upon the participants herein no later than October 31, 1997;

2. Discovery responses are due no later than November 21, 1997;

3. Pre-filed direct testimony is due no later than twelve noon, December 19, 1997;

4. Pre-filed rebuttal testimony is due no later than twelve noon, January 16, 1998;

5. Pre-Hearing briefs are due no later than twelve noon, January 30, 1998;³
6. The proposed date for the hearing is February 19, 1998, at 9:00 a.m.;
7. The Authority reserves the right to modify this schedule at anytime.

IV. Recommendation

The Hearing Officer recommends that:

1. The Authority accept the issues as outlined by the parties.
2. The Authority approve the above schedule for discovery, the filing of testimony, the filing of briefs and the date for the hearing on the merits.⁴
3. Any objections regarding discovery or any other procedural matters, including motions for continuance, should be filed with the Executive Secretary no later than twelve noon, December 17, 1997.

ATTEST:


Executive Secretary

Respectfully submitted,


Melvin J. Malone, Director
serving as Hearing Officer

³ The pre-hearing briefs should not only include a discussion of the issues as identified by the parties, but should also include a discussion of any issues related to by-pass approval before the Federal Energy Regulatory Commission. In addition, any request for post-hearing briefs should be made by the parties at the conclusion of the hearing on the merits.

⁴ Neither of the parties objected to the proposed schedule. Transcript at pp. 16-19.